

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
February 9, 2011**

In attendance: Don Marshall, Chair, and Commission Members Carol Newman, John Riggs, Joel Sherman, Jiles Smith, and Douglas Williams.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Eric Weirich, Bureau Chief, Enforcement Branch; and Vanessa Himmelblau, Senior Staff Counsel, Legal Division.

Chairperson Marshall asked that each new or reappointed member of the Commission introduce themselves.

Commission member Douglas Williams stated that he has been in the construction industry for 44 years and a representative of the union for the last 19 years. He has worked to make sure the playing field is level for all good contractors.

Commission member Joel Sherman has been in the workers' compensation industry for over 30 years. "I have had somewhat broad experience in various areas of the industry, and I am excited about the possibility of sitting on this Commission", stated Mr. Sherman.

Commission member Jiles Smith was reappointed and has served on the Commission for the last four years. "I enjoy working on the Commission with fellow commissioners. I think we have been doing great things. We need to kick it up a notch the next four years", stated Mr. Smith.

Commission member Carol Newman is the general counsel for the State Compensation Insurance Fund. She has been practicing insurance law for nearly 30 years. She is responsible for the legal internal audit in government.

Chairperson Marshall asked the Commission members if they had an opportunity to read the summary minutes from the previous FAC Meeting and if there were any comments.

Motion

Commission member Smith made the motion to accept the November 16, 2010 summary minutes as submitted.

Commission member Riggs seconded the motion.

Commission members Carol Newman, Joel Sherman, and Douglas Williams abstained from the vote as they were not present at the November 16, 2010 meeting.

Action

The minutes were passed.

The next item of business was the approval of the revised bylaws of the FAC. The revisions include a section for a re-election in the event of a tie vote and a section allowing the chair to create sub-committees composed of FAC members. Chairperson Marshall asked members of the Commission if they had any questions or comments on the bylaws.

Chairperson Marshall called for a motion to approve the revised bylaws.

Motion

Commission member Riggs made the motion to approve the bylaws as submitted.

Commission member Williams seconded the motion.

Action

The revised Bylaws were passed.

The next item of business was the approval of the FAC Goals and Objectives, which outline the Commission's plans for the upcoming fiscal year.

Chairperson Marshall gave an overview of the Goals and Objectives, which he stated are very similar to the prior years' goals and objectives. The key elements are research and a balanced caseload.

There was discussion about giving the Commission members the Goals and Objectives prior to the meeting so they can review them and provide their input before voting. Vanessa Himelblau, Legal Counsel, explained that the document was sent to a couple members of the Commission in advance. "Any document that is distributed to a majority of the Commission automatically becomes a public document, and since we did not want to have to comply with that portion of Bagley-Keene, it was not distributed to the entire Commission", stated Ms. Himelblau.

Commission member Newman stated, "These aligned nicely with the statutory language of what our duties are in order to help reduce the risk of fraud." She also commented that the Commission should do outreach to target the next generation of employees, employers and people who will be coming into the system.

Public Comment

Steve Zeltzer, California Coalition for Workers' Memorial Day, was surprised that the Department would not provide the Goals and Objectives to all members of the Commission. Mr. Zeltzer also commented that he believes there should be a complete audit of the money going to the district attorney offices.

Dina Padilla, Voices Best and the Coalition of Workers' Memorial Day, made complaints about Marin, Sacramento, Yolo, Los Angeles, and San Diego counties. Ms. Padilla also

stated that she has proof that a large medical provider is cost shifting from workers' compensation to the employee's medical care plan.

Gary Fagan, San Bernardino County, recommended that before the Commission determines the Goals and Objectives, they talk with the district attorneys to understand the needs and issues of the different offices.

In response to Mr. Zeltzer's comment about auditing the workers' compensation grant money, Mr. Fagan stated that the district attorneys are subject to an audit every 3 years and that information is public.

Motion

Commission member Smith made the motion to approve FAC Goals and Objectives for FY 2011/12.

Commission member Williams seconded the motion.

Action

The Goals and Objectives were unanimously passed.

Chairperson Marshall recommended creating a sub-committee made up of members of the Commission to discuss outreach, and then report their findings back to the Commission. Mr. Marshall wants to see a more state-wide outreach program rather than the current county-specific outreach programs. The issue is that not all counties in the State have an insurance fraud grant, and therefore, those counties are not receiving outreach. "I think we are missing a segment of the population", stated Chairman Marshall.

Another benefit of a state-wide outreach program is having a uniform message throughout the State so that certain areas of the population are not missed. Outreach needs to be two parts: reaching out to the general public to explain what workers' compensation fraud is, and prosecutors reaching out to those reporting the fraud.

Mr. Marshall stated that Commission member Lilia Garcia volunteered to chair the outreach sub-committee and asked for volunteers from the Commission to work with Ms. Garcia. There was some discussion about the time commitment for the sub-committee, and Chairperson Marshall clarified that the sub-committee will not be creating an outreach program, but rather, determining whether a state-wide outreach program is a viable option and if the Commission can set aside funds state-wide for outreach rather than for specific counties. Vanessa Himelblau, Legal Counsel, explained that per Bagley-Keene, the sub-committee must consist of two or less individuals from the Commission; otherwise, they will need to hold public meetings.

Public Comment

Steve Zeltzer commented that he wants the Commission to determine how many complaints are filed by injured workers and what happens to these complaints.

Dina Padilla suggested that there be a state-wide complaint form with a form number for all district attorney offices that individuals can fill out when they file a complaint.

Chairperson Marshall stated that he would also like to develop a sub-committee to look at the reporting process and determine if there is a better way to report the information. He would like to see the Program Report revised in the future to better assist the Review Panel in making a logical and fair assessment when they determine the funding awards.

Deputy Commissioner Plein reported that the current Program Report was developed by a group of individuals including district attorneys, an FAC member and himself. The district attorneys are required by statute to submit the Report twice a year, but the information is collected three times as it's also included in the grant application.

Chairperson Marshall asked Mr. Plein if he believes the Report shows an accurate representation of every open case in the State regarding workers' compensation insurance fraud. Deputy Commissioner Plein indicated that not all counties were good at updating their stats.

Mr. Fagan requested that the Commission get input from the district attorneys before making any changes to the Report. Some information is required to be kept confidential, and therefore, should not be reported.

Commission member Smith raised the issue about the possibility of having the district attorneys give more details about high level cases so the Review Panel and the Commission can have a better understanding of the complexity of the cases and what it takes to investigate and prosecute these types of cases. "I'm going from an outcome base. You can look at numbers and generally assess how active a county is. On the other hand, when you have a very complex case, it can skew the numbers", stated Mr. Smith. He went on to say that counties should have the opportunity to explain, for example, why they have more investigators than another county.

Chairperson Marshall agreed by saying that he'd like to get an idea of the actual complexity of the case rather than reading in the grant application that the county is working on a "big case". Knowing this information will help the Review Panel see how other outcomes of the Program may have been affected or impacted by these large complex cases.

Public Comment

Michael Silverman, Deputy District Attorney from Riverside County, suggested that in evaluating the grant applications, the focus should be more on the actual application than on the Program Report.

Steve Zeltzer commented on a case where an injured worker was prosecuted and convicted by the San Mateo County District Attorney's Office. The case was eventually overturned. Mr. Zeltzer believes there should be an assessment of some of the prosecutions, particularly in the case of injured workers when the case is overturned,

because it is a waste of public money to prosecute workers improperly for workers' compensation fraud.

Dina Padilla commented that when someone files a complaint, they should be entitled to know if an investigation is taking place.

Mr. Welks, an injured worker, made a public comment about various corporations that he believes have engaged in illegal practices in California and should be looked into by the Insurance Commissioner.

Commission member Sherman asked whether or not there is a procedure for a county to come back to the Commission after the initial award process and request additional funds for a complex case they're working on.

Mr. Plein noted that there used to be a process in place where five percent of the funds were withheld and awarded separately, but that was changed by statute to make it a one-time allocation.

Commission member Newman volunteered to be part of the sub-committee to take a look at the Program Report and determine whether or not it's feasible to revise it.

Vanessa Himelblau, Legal Counsel, discussed the Bagley-Keene Act. "I think the best place to start is towards the back of the act and to say that every commissioner who knowingly violates the act is guilty of a misdemeanor", stated Ms. Himelblau. Generally speaking, closed session meetings are not available to the FAC. Commission members can communicate with stakeholders on issues germane to the Commission as long as a majority of the members are not communicating with the same individuals about the same issues.

Ms. Himelblau also discussed the issue of public documents. All FAC agendas and writings that are distributed to a majority of the Commission are considered public information.

Fraud Division Report

Mr. Plein informed the Commission and public that the district attorney information meeting is scheduled for March 2, 2011. The Insurance Commissioner's Review Panel is scheduled for June 1, 2011. This year Don Marshall and John Riggs will sit on the Panel representing the Fraud Assessment Commission. Eric Weirich, Bureau Chief, Workers' Compensation Program will represent the Fraud Division, there will be an expert on consumer fraud and the fifth panelist will be a representative from the Department of Industrial Relations (DIR).

Gary Fagan, Deputy District Attorney, San Bernardino County, brought up the issue of the Department not receiving expenditure authority to release the money assessed by the FAC in September. That means \$1.6 million dollars that was assessed will be collected from the employers, but cannot be spent unless it's included in the budget. The district attorneys asked the Department of Insurance to submit a spring finance letter to the Department of Finance to be included in the May revise of the budget. The

district attorneys also requested the FAC become involved in the process to see that the money gets distributed to the counties.

Mr. Fagan also brought up the issue that some district attorneys are concerned the FAC thinks the grant money awarded to the counties disappears and they don't know where it goes. Mr. Fagan explained the district attorneys are required annually to submit a detailed budget and an independent financial report to show how the money is spent.

There was discussion about the possibility of the FAC sending a letter to the Legislature to get the expenditure authority for the additional \$1.6 million that was assessed by the Commission. Commission member Smith questioned why the district attorneys aren't willing to submit their own letter to the Legislature. Mr. Fagan responded by saying they're worried the Legislature might try to take away the entire program and use the money towards the general fund.

Motion

Commission member Newman made a motion that the Chair and Vice-Chair of the Commission be given authority to investigate and communicate to the administration regarding the percentage of district attorney budgets that have been reduced.

Note: The transcript indicates that the motion made by FAC member Carol Newman was seconded by Deputy Commissioner Plein. This is an aberration and needs to be modified at a later time.

Action

The motion was unanimously passed.

Chairperson Marshall pointed out that the next scheduled meeting of the FAC is June 15, 2011.

General Public Comments

Steve Zeltzer and Dina Padilla made public comments regarding the need of the district attorneys to prosecute insurance companies and self-insured employers who defraud injured workers.

Patrick Wilkes made a public comment about various title companies that have engaged in a number of unfair and illegal business practices via their California subsidiaries, including violations of the Insurance Code.

Steve Zeltzer stated, "It is our view, as a matter of fact, there is one-sided prosecution in California against injured workers for workers' comp fraud and not against insurance companies for workers' comp fraud against injured workers."

Being no further Commission business, Chairperson Marshall adjourned the meeting.